IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.446 OF 2006

Dilip Hathibhai Udani. ...Petitioner

vs.

1. Sharda Jayantilal Mulji & others. ...Respondents

Mr.D.D.Madan, Sr.Advocate i/b. Hemangi Modi, for Petitioner.

Mr.P.K.Samdhani, Sr.Advocate i/b. M/s.K.Ashar & Co.,for Respondents.

CORAM: D.K.DESHMUKH, J.

DATED: 27th November,2006..

P.C.:-

1. By this petition the petitioner challenges the order passed by the Arbitral Tribunal. By that order the Arbitral Tribunal has held that the petitioner is not a party to the arbitration proceedings going on before the Arbitral Tribunal. It is common ground that the Arbitral Tribunal which has made the order consists of the Arbitrator appointed by the present respondent nos. 1, 2 and 3 who are claimants and the Arbitrator appointed by the respondent nos.4 and 5 who are respondents in the arbitral proceedings and a presiding Arbitrator

appointed by the two arbitrators. According to the respondent nos. 1, 2 and 3 who are claimants before the Arbitral Tribunal which has passed the order impugned in this petition, they have not made any claim against the petitioner before the Arbitral Tribunal. The petitioner is not a party to this Arbitral Proceedings therefore, neither the order that is impugned in the petition nor any final award that may be made in the arbitral proceedings in any way will be binding on the petitioner. In view of this clear stand taken by the respondent nos. 1 ,2 and 3 who are claimants it cannot be said that the petitioner can have any grievance against the order impugned in the petition.

2. It is the case of the petitioner that because of the correspondence exchanged between the parties, the arbitration agreement between the petitioner and the respondent nos.1, 2 and 3 has come into existence and according to the petitioner that arbitration agreement was also invoked by the respondent nos.l, 2 and 3. It is clear from the order passed by the Arbitral Tribunal which is impugned in this petition that even assuming that there is an arbitration agreement between the petitioner and respondent nos. 1,2 and 3 and that the arbitration clause was invoked, the present Arbitral Tribunal which has passed the impugned order is not considering those claims. It is made clear that as a result of the order passed by the Arbitral Tribunal, the respondent nos. 1, 2 and 3 are free to pursue

their claims, if any, against the petitioner and the petitioner is also entitled to take any action against the respondent nos. 1,2 and 3 if the petitioner is entitled to take it under the law.

Petition is disposed of.